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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,880	04/07/2004	Clifton Leigh Miller	LP-02-021	4856
7590 Francis Law Group 1942 Embarcadero Oakland, CA 94606			EXAMINER GROSSO, HARRY A	
			ART UNIT	PAPER NUMBER
			3781	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

NIT

Office Action Summary	Application No. 10/822,880	Applicant(s) MILLER, CLIFTON LEIGH	
	Examiner Harry A. Grosso	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The preliminary amendment to the specification filed on April 7, 2004 is objected to because it improperly claims the application as a United States National Stage Application of International Application No. PCT/AU02/0079. The requirements defined in the Notice Regarding Benefit Priority Claim(s) mailed June 29, 2004 must be met or the claim to priority must be canceled.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 8 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 8 recites the limitation "said handle" in line 1. There is insufficient antecedent basis for this limitation in the claim. Claim 1 does not disclose a handle. It appears this claim should depend from claim 7 and will be read as such for the purpose of this action. Claim 9 depends from claim 8.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 3-10 are rejected under 35 U.S.C. 102(b) as being anticipated by D'Antonio (4,416,387).
6. Regarding claims 1 and 10, D'Antonio discloses a device (22) for sealing paint in a container having a base and a cylindrical wall (Figures 1-4, column 2, lines 19-25). The device has a circular disk (24, column 2, lines 39-56) and a side wall (36) extending outward with a horizontal lip (48) that engages the inner surface of the container.
7. Regarding claim 3, the outer edge diameter of the device is greater than the inner diameter of the container (column 2, lines 52-56).
8. Regarding claim 4, the side wall is an arcuate shape to fit the cylindrical shape of the container wall.
9. Regarding claim 5, the side wall has at least three sections (38, 40, 42, 48) and the lip (48) extends outward at a different angle than the walls (42, 38).
10. Regarding claim 6, wall sections extend outwardly at a smaller angle than the lip section (0 degrees versus 90 degrees) when measuring the angle of outward extension relative to the edge of the center disk.
11. Regarding claim 7, the device has a handle for insertion and removal (26).
12. Regarding claim 8, the handle has a cavity (46) and is compressible (column 3, lines 35-38).
13. Regarding claim 9, the handle is in fluid communication through the disk and compressing the handle causes some air to be evacuated from the cavity and aids in sealing the device (column 3, lines 17-22).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2, 7/2, 11-14, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Antonio in view of Leach (4,312,459).

16. Regarding claim 2, D'Antonio discloses the invention except for the side wall extending angularly upward from the disk. Leach discloses a similar device 70, Figure 6, column 3, lines 50-57) with a side wall (71) that extends angularly upward from the disk. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a side wall portion that extends angularly upward as disclosed by Leach in the device disclosed by D'Antonio replacing the outer wall (42) to allow the resilience of the material to provide more outward pressure on the lip for fitting the lip against the inner surface of the container to allow for inconsistencies in the roundness of the cylindrical container wall.

17. Regarding claim 7/2, the invention is disclosed by D'Antonio as modified by Leach and D'Antonio further discloses the device has a handle.

18. Regarding claim 11, D'Antonio discloses a device for sealing paint in a can having a flat circular disk (24) with a flat lower surface intended for fitment in the can, a circular side wall (36) that would have an arcuate profile and a horizontal outer rim (48) having a perimeter diameter that exceeds the diameter of the can. , D'Antonio does not

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teach the side wall extending angularly upward from the disk. Leach discloses a similar device 70, Figure 6, column 3, lines 50-57) with a side wall (71) that extends angularly upward from the disk. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a side wall portion that extends angularly upward as disclosed by Leach in the device disclosed by D'Antonio replacing the outer wall (42) to allow the resilience of the material to provide more outward pressure on the lip in fitting the lip against the inner surface of the container to allow for inconsistencies in the roundness of the cylindrical container wall.

19. Regarding claim 12, D'Antonio as modified by Leach discloses the claimed invention except for the rim perimeter exceeding the can diameter by some 1.0 percent. It would have been an obvious matter of design choice to have the rim perimeter exceed the can diameter by some 1.0 percent, since applicant has not disclosed that having the rim perimeter exceed the can diameter by some 1.0 percent solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the rim diameter as disclosed by D'Antonio.

20. Regarding claim 12, D'Antonio as modified by Leach discloses the claimed invention except for circular side wall extending radially angularly upwards at an angled rise of not less than 10 percent of the can internal diameter. It would have been an obvious matter of design choice to have circular side wall extending radially angularly upwards at an angled rise of not less than 10 percent of the can internal diameter, since applicant has not disclosed that having circular side wall extending radially angularly upwards at an angled rise of not less than 10 percent of the can internal diameter

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solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the circular side wall extending radially angularly upwards as disclosed by D'Antonio as modified by Leach.

21. Regarding claim 14, D'Antonio discloses a control device (26) that functions as a handle to assist insertion and as a squeeze chamber.

22. Regarding claim 16, D'Antonio discloses the device is made from molded thermoplastic plastics (polyvinyl chloride, column 3, lines 29-35).

23. Regarding claim 17, D'Antonio as modified by Leach discloses the invention and Leach further discloses his device is made of clear plastic material (column 3, lines 50-53) so the paint color can be observed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a clear plastic material as disclosed by Leach in the device to allow the paint color to be observed with the device in place.

24. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over D'Antonio as modified by Leach in view of Donnelly (3,924,774). D'Antonio and Leach disclose the invention except for the two raised ribs extending to the extremity of the flat underside of the device. Donnelly discloses a similar device with raised ribs that extend to the extremity of the flat underside of the device (48, Figures 5 and 6, column 3, lines 26-37) to act as stiffening ribs for the device. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of raised ribs extending to the extremity of the flat underside of the device as disclosed

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by Donnelly in the device disclosed by D'Antonio and Leach to act as stiffening ribs for the device.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Anthony Stashick
Supervisory Patent Examiner
Art Unit 3781

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